

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

LONZO SHEPPARD,

Plaintiff,

v.

BRYAN PHILLIPS,

Defendant.

Case No. 1:24-cv-0078-BAM (PC)

**ORDER REQUIRING PLAINTIFF TO SHOW  
CAUSE WHY ACTION SHOULD NOT BE  
DISMISSED, WITHOUT PREJUDICE, FOR  
FAILURE TO EXHAUST PRIOR TO FILING  
SUIT**

(ECF No. 1)

**TWENTY-ONE (21) DAY DEADLINE**

Plaintiff Lonzo Sheppard (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

Pursuant to the Prison Litigation Reform Act of 1995 (“PLRA”), “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Prisoners are required to exhaust the available administrative remedies prior to filing suit. *Jones v. Bock*, 549 U.S. 199, 211 (2007); *McKinney v. Carey*, 311 F.3d 1198, 1199–1201 (9th Cir. 2002). Exhaustion is required regardless of the relief sought by the prisoner and regardless of the relief offered by the process, *Booth v. Churner*, 532 U.S. 731, 741 (2001), and the exhaustion requirement applies to all suits relating to prison life, *Porter v. Nussle*, 534 U.S. 516, 532 (2002).

1 According to the attachments to the complaint, Plaintiff submitted a 602 grievance on his  
2 conditions of confinement, which was received by the Office of Grievance, on December 20,  
3 2023. (Doc. 1, p. 10.) The Grievance Receipt Acknowledgment states that the Office of  
4 Grievance would complete review by February 19, 2024. *Id.* Plaintiff's complaint in this case is  
5 signed and dated January 15, 2024, and filed on January 17, 2024, which predate the completion  
6 of administrative review. (Doc. 1, p. 12.) Accordingly, it appears that Plaintiff failed to exhaust  
7 his administrative remedies before filing this case. Based on the information provided, it appears  
8 Plaintiff filed suit prematurely without first exhausting his administrative remedies in compliance  
9 with the PLRA, section 1997e(a).

10 Accordingly, Plaintiff is HEREBY ORDERED to show cause within **twenty-one (21)**  
11 **days** from the date of service of this order why this action should not be dismissed, without  
12 prejudice, for failure to exhaust prior to filing suit. *See, e.g., Albino v. Baca*, 747 F.3d 1162, 1169  
13 (9th Cir. 2014) (in rare cases where a failure to exhaust is clear from the face of the complaint, it  
14 may be dismissed for failure to state a claim); *Medina v. Sacramento Cty. Sheriff's Dep't*, No.  
15 2:16-cv-0765 AC P, 2016 WL 6038181, at \*3 (E.D. Cal. Oct. 14, 2016) ("When it is clear from  
16 the face of the complaint and any attached exhibits that a plaintiff did not exhaust his available  
17 administrative remedies before commencing an action, the action may be dismissed on screening  
18 for failure to state a claim."); *Lucas v. Dir. of Dep't. of Corrs.*, 2015 WL 1014037, at \*4 (E.D.  
19 Cal. Mar. 6, 2015) (relying on *Albino* and dismissing complaint without prejudice on screening  
20 due to plaintiff's failure to exhaust administrative remedies prior to filing suit).

21  
22 IT IS SO ORDERED.

23 Dated: May 3, 2024

24 /s/ Barbara A. McAuliffe  
25 UNITED STATES MAGISTRATE JUDGE  
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